IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.7412 OF 2006**

Chetan Yeshwant Narute & Ors. ... Petitioners

V/s.

Dharmaraj Kundalika Naiknaware & Ors. ... Respondents

Mr.P.M.Shah for the petitioners.

**CORAM : A.P.DESHPANDE, J.**

**DATED : 13th November, 2006**

P.C.

The petitioners are original defendants who had caused their appearance in R.C.S.No.284 of 1996 by filing reply to the temporary injunction application. But thereafter the petitioners chose not to file written statement and have also not cross examined the witnesses of the plaintiff so also chose not to lead any evidence which resulted in passing of a decree. Aggrieved whereby, the petitioner filed Civil Appeal No.235 of 2000 before the Appellate Court and tried to tender the written statement by moving an application sometime in August, 2003. The application is absolutely silent as to why and under what circumstances, the petitioners / defendants did not filed the written statement or lead any evidence. The

Appellate Court held that the written statement cannot be filed in First Appeal as the same was not filed before the Trial Court. Even otherwise, the application does not spell out any reason as to why the defendants could not file their written statement before the Trial Court. Perused the order impugned in this petition. No interference is called for. The learned counsel for the petition places reliance on the order passed by the Apex Court reported in **(2002) 10 Supreme Court Cases 292.** The order seems to have been passed in the peculiar facts of that case and the same does not lay down any law.

**(A.P.DESHPANDE,J)**